TORTS—ELECTRICITY—INJURIES TO TRESPASSER.—A plank extended from the defendant's wooden-faced bulkhead over the water, protruding about four feet beyond the defendant's boundary line. A boy of sixteen swam across to, and climbed upon, the defendant's property, walked to the end of the plank, and, while preparing to dive, was killed by electric wires falling from the cross arm of a pole maintained by the defendant. The administratrix of decedent's estate brought an action for damages. *Held*, the defendant is not liable. *Hynes* v. *New York Central R. Co.*, 176 N. Y. Supp. 795.

The plaintiff's decedent was clearly a trespasser. The owner of a wharf, pier or like projection has a good right against all private intruders or trespassers, even if such projection run out beyond the proper exterior line. *Wetmore* v. *Atlantic White Lead Co.*, 37 Barb. (N. Y.) 70; *Wetmore* v. *Brooklyn Gaslight Co.*, 42 N. Y. 384. The entire plank was in the defendant's possession, and such possession, even without legal title, is good as against a mere intruder who must justify his invasion by virtue of his own title and not by the weakness of the defendant's title. *Jackson* v. *Harder*, 4 Johns. (N. Y.) 202, 4 Am. Dec. 262; *Cutts* v. *Spring*, 15 Mass. 135; *Beardslee* v. *New Berlin Co.*, 207 N. Y. 34, 100 N. E. 434, Ann. Cas. 1914B, 1287.

In accordance with the principle that there is no liability for negligence where there is no duty to exercise care, an electric company is not responsible for injuries to trespassers or licensees, save where the injury is willful or wanton. *State* v. *Chesapeake & Potomac Telephone Co.*, 123 Md. 120, 91 Atl. 149, 52 L. R. A. (N. S.) 1170; *McCaughna* v. *Owosso & Carunna Electric Co.*, 129 Mich. 407, 89 N. W. 73, 95 Am. St. Rep. 441. Likewise it has been held that if a licensee goes under a porch to obtain shelter from a storm, and, while there, is killed by lightning conducted to his body by a wire negligently maintained over the porch by an electric company, the company is not liable for his death, since it owed him no duty to maintain the wire properly. *Cumberland Telegraph Co.* v. *Martin*, 116 Ky. 554, 76 S. W. 394, 77 S. W. 718, 105 Am. St. Rep. 229, 63 L. R. A. 469. But, on the other hand, it has been held that where the owner of a vacant lot allows the public to use it as a thoroughfare, an electric company cannot escape liability for injury to others, due to its negligence in maintaining its wires, on the ground that such persons were trespassers or bare licensees as against the owner of the land. *Guinn* v. *Delaware Telephone Co.*, 72 N. J. L. 276, 62 Atl. 412, 111 Am. St. Rep. 668, 3 L. R. A. (N. S.) 988; *Connell* v. *Keokuk Electric Railway Co.*, 131 Iowa 622, 109 N. W. 177.

While, as to trespassers generally, electric companies owe no duty save to refrain from willful and wanton injury, yet they must take into consideration the thoughtlessness and inexperience of children, and are liable for negligence in maintaining wires in places where they know children are accustomed to play. *Temple* v. *McComb City Electric Co.*, 89 Miss. 1, 42 South. 874, 119 Am. St. Rep. 698, 10 Ann. Cas. 924, 11 L. R. A. (N. S.) 449; *Consolidated Electric Co.* v. *Healy*, 65 Kan. 798, 70 Pac. 884. Especially is this true in stringing wires over trees with low hanging branches, out of which it is almost impossible to

keep small boys. *Temple* v. *McComb City Electric Co., supra; Williams* v. *Springfield Gas & Electric Co.* (Mo.), 202 S. W. 1. So also, it has been held that an electric light company, which maintains its wires upon a bridge, is bound to exercise a very high degree of care to protect the safety of boys who, with its knowledge, are accustomed to use it as a bathing place and diving stage. *Nelson* v. *Branford Lighting Co.*, 75 Conn. 548, 54 Atl. 303. For the doctrine of *attractive nuisances*, see 1 VA. LAW REV. 81; 2 VA. LAW REV. 233.

In Virginia, electric companies are not held as insurers against accident, but they are held to a high degree of care in the construction and maintenance of their dangerous appliances. See *Norfolk Railway & Light Co.* v. *Spratley*, 103 Va. 379, 49 S. E. 502. A recovery was allowed where a small boy reached his hand through a fence, caught hold of a live wire belonging to the defendant company, and was injured thereby, the court holding that the trespass of a young child could not be set up as a defense by the telephone company. *Lynchburg Co.* v. *Booker*, 103 Va. 595, 50 S. E. 148.

TRUSTS—REMOVAL OF TRUSTEES—REFUSAL TO CARRY OUT TESTAMENTARY DIRECTIONS—SECRET PROFITS—MINGLING TRUST FUNDS.—The plaintiff, the testamentary trustee of deceased's estate, instituted an action for an accounting and approval by the court of his activities as trustee, and the defendant, a beneficiary under the will of the deceased, made a motion for the removal of the plaintiff as testamentary trustee. The trustee acknowledged his failure to divide the estate into six separate trusts as was stipulated in the deceased's will. It was proved that he received secret profits in selling stocks of the estate, but he offered to compensate the estate therefor upon this being discovered. The plaintiff conceded that he mingled the trust funds with his own funds and used them as his own property. *Held*, the motion for removal of the trustee is granted. *Gould* v. *Gould*, 178 N. Y. Supp. 37.

It is within the discretion of a court of equity, in considering the interest of the trust estate and beneficiaries, to determine whether grounds for the removal of a testamentary trustee exist. See *Jones* v. *Bryant*, 204 Ill. App. 609; *Baltimore Bargain House* v. *St. Clair*, 58 W. Va. 565, 52 S. E. 660. Refusal or neglect to follow the instructions in the testator's will is always ground for the trustee's removal. *Cavender* v. *Cavender*, 114 U. S. 464; *In re Hoysradt*, 45 N. Y. Supp. 841. In the latter case the trustee was directed to sell real estate "within a reasonable and convenient time" after the testator's death, but neglected to sell a part of the estate, an unproductive tract, until 24 years after he qualified as trustee. A new trustee was appointed although the original trustee had acted in good faith and his conduct had resulted in a great increase in the value of the property.

The trustee must exercise the highest degree of good faith and will not be permitted to use his trusteeship for individual advantage, benefit or profit. Thus, misconduct in office such as gross improvidence, incompetency, dishonesty or breach of trust, if it amounts to putting the trust estate in jeopardy, is sufficient ground for revocation of the